JD(ATL)—20—06
Lanham, MD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

HARGROVE, INC.

and **CASE 15-CA-16086**

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES (IATSE), LOCAL NO. 39, AFL-CIO

and

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION NO. 1846, AFL-CIO
Party in Interest

Kevin McClue, Esq.,
Counsel for General Counsel.
Steven E. Bers, Esq., Counsel for Respondent.
James Fagan, Esq., Counsel for
Charging Party.
William Lurye, Esq., Counsel for
Party in Interest.

DECISION

Statement of the Case

WILLIAM N. CATES, Administrative Law Judge. This case is before me on Counsel for General Counsel's Motion for Summary Judgment filed on April 21, 2006. The original Complaint and Notice of Hearing herein, Complaint, which issued on May 21, 2001, was based upon an unfair labor practice charge and an amended charge filed on February 16 and April 24, 2001, by International Alliance of Theatrical Stage Employees (IATSE), Local No. 39 AFL-CIO, herein called the Union or IATSE, alleges that Hargrove, Inc., herein called the Respondent, violated Section 8(a)(1), (2) and (5) of the National Labor Relation Act, as amended, herein Act, by in or about November 2000, entering into a collective-bargaining agreement with United Brotherhood of Carpenters and Joiners of America, Local Union No. 1846, AFL-CIO, herein Carpenters or Party in Interest, as the exclusive collective bargaining representative in an appropriate unit even though the Carpenters did not represent an

uncoerced majority in the appropriate unit and, by since in or about November, 2000, failing to abide by the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement between Respondent and the Union and by, in or about November 2000, ceasing to apply the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement including the requirement that Respondent use the Union's referral services when seeking applicants for employment and without first affording the Union notice and an opportunity to bargain. On June 7, 2001, the Respondent filed its Answer to the Complaint in which it denied having violated the Act in any manner alleged in the Complaint. On June 21, 2001, an Amended Complaint and Notice of Hearing, herein Amended Complaint, was issued restating the allegations of the original Complaint and alleging the Carpenters to be a labor organization within the meaning of Section 2(5) of the Act. On July 3, 2001, the Respondent filed its Answer to the Amended Complaint in which it denied having violated the Act in any manner alleged in the Amended Complaint. The scheduled trial of this matter was postponed indefinitely on October 18, 2001, for settlement purposes. On February 14, 2005, a new trial date was set for May 27, 2005. On March 12, 2005, trial was again postponed indefinitely. On May 11, 2005, Respondent filed an Amended Answer to the Amended Complaint in which Respondent admitted all allegations of the Amended Complaint. Respondent limited its admissions for paragraphs 8 and 18 to the time periods covered by the Amended Complaint. On May 17, 2005, Counsel for General Counsel filed a Motion for Summary Judgment with the National Labor Relations Board, herein Board. On January 4, 2006, the Board denied the Motion for Summary Judgment based on the Carpenters (Party in Interest's) opposition in which the Party in Interest contended material factual issues remained for resolution at a trial. On April 5, 2006, the Party in Interest waived its interest in the matter and indicated it would not participate in any trial of this matter. On April 10, 2006, the Party in Interest advised it would not oppose a new Motion for Summary Judgment submitted by Counsel for General Counsel. Based on Respondent's effectively admitting all of the Amended Complaint allegations, the Party in Interest's waiver of interest in this matter, and Counsel for General Counsel's Motion for Summary Judgment, I make the following findings of fact and conclusions of law:

Findings of Fact and Conclusions of Law

1. The charge in this proceeding was filed by the Union on February 16, 2001, and was served by regular mail upon the Respondent on the same date.

2. The amended charge in this proceeding was filed by the Union on April 24, 2001, and served by regular mail on Respondent on the same date.

3. At all material times, Respondent, a Maryland corporation with an office and place of business in Lanham, Maryland, has been in the business of producing tradeshows, conventions, parades and other special events.

4. During the 12-month period ending April 30, 2001, Respondent, in conducting its business operations described above performed services valued in excess of $50,000 in states other than the State of Maryland.

5. At all material times, Respondent has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

7. At all material times, the United Brotherhood of Carpenters and Joiners of America, Local Union No. 1846, AFL-CIO, herein Carpenters or Party in Interest has been a labor organization within the meaning of Section 2(5) of the Act.

8. At all material times, Senior Project Manager Ted Unland and Supervisor Chris Jackson have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

9. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Those employees who are engaged in the installation, dismantling and operation of scenery, curtains, properties, electrical effects, and the operation of spotlights; installation and dismantling of exhibits, displays, booths, decorations; and the installation, dismantling and operation of sound accessories, motion picture, T.V. and video tape productions where the Company has the contract and responsibility for the and installation, dismantling and operation of such equipment.

10. Since about August 15, 1988, and at all material times, the Union has been the designated exclusive collective bargaining representative of the Unit and since August 15, 1988, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement which is effective from August 15, 1988 to the present.

11. At all times since August 15, 1988, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

12. On or about August 15, 1988, Respondent entered into a collective-bargaining agreement effective for the period July 1, 1986 to June 30, 1989, whereby it recognized the Union as the exclusive collective bargaining representative of the unit described above and agreed to continue the agreement in effect from year to year thereafter unless timely notice was given in accordance with the terms of Section 17 of the collective bargaining agreement.

13. In or about November 2000, Respondent in New Orleans, Louisiana, entered into a collective-bargaining agreement with the Carpenters as the exclusive collective bargaining representative of the Unit.

14. Respondent engaged in the conduct described in paragraph 13, even though the Carpenters did not represent an uncoerced majority of the Unit.

15. Since in or about November 2000, Respondent in New Orleans, Louisiana, failed to abide by the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement with the Union.

16. In or about November 2000, the Respondent ceased applying the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement described in paragraph 12 above including the requirement that Respondent use the Union's referral services when seeking applicants for employment.

17. Respondent engaged in the conduct set forth in paragraphs 15 and 16 above without first affording the Union notice or an opportunity to bargain.

18. The subjects set forth in paragraphs 15 and 16 above related to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

19. By the conduct described above in paragraphs 13 and 14, Respondent has been rendering unlawful assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act.

20. By the conduct described above in paragraphs 15, 16 and 17, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

21. The unfair labor practices of Respondent described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent engaged in certain unfair labor practices, I recommend that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. Respondent having rendered unlawful assistance and support to the Carpenters by entering into a collective-bargaining agreement with the Carpenters as the exclusive collective bargaining representative of the Unit even though the Carpenters did not represent an uncoerced majority of the Unit, it must cease giving any effect to and rescind any or all of the collective bargaining provisions that are still applicable, and it shall refund any union dues collected pursuant to its collective-bargaining agreement with the Carpenters and withdraw recognition from the Carpenters and cease any unlawful assistance to the Carpenters. Respondent shall apply the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement with the Union to any Unit employees employed pursuant to its collective-bargaining agreement with the Carpenters.

Having found Respondent failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees in the Unit it must bargain collectively and in good faith with the Union and abide by the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement with the Union including the requirement that it use the Union's referral services when seeking applicants for employment. Respondent shall make whole, with interest, those that would have been applicants for referral through the Union's referral services but for the Respondent's unlawful assistance and support to the Carpenters.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:[1]

ORDER

The Respondent, Hargrove, Inc., it officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Rendering unlawful assistance and support to United Brotherhood of Carpenters and Joiners of America, Local Union No. 1846, AFL-CIO, including entering into a collective-bargaining agreement with the Carpenters at a time when the Carpenters did not represent an uncoerced majority of the Unit.

(b) Giving any effect to the collective-bargaining agreement it entered into in New Orleans, Louisiana, in or about November 2000, with the United Brotherhood of Carpenters and Joiners of America, Local Union No. 1846.

(c) Failing and refusing to bargain collectively and in good faith with the International Alliance of Theatrical Stage Employees (IATSE), Local No. 39, AFL-CIO, as the exclusive collective bargaining representative of the Unit employees.

(d) Failing to abide by the terms of the July 1, 1986 to June 30, 1989 collective bargaining agreement with the International Alliance of Theatrical Stage Employees (IATSE), Local No. 39, AFL-CIO.

(e) Failing to apply the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement with the International Alliance of Theatrical Stage Employees (IATSE), Local No. 39, AFL-CIO including the requirement that it use the International Alliance of Theatrical Stage Employees (IATSE), Local No. 39, AFL-CIO referral services when seeking applicants for employment.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Withdraw recognition from the United Brotherhood of Carpenters and Joiners of America, Local Union No. 1846, AFL-CIO, for employees in the Unit and rescind the collective-bargaining agreement it entered into with the Carpenters in or about November 2000, in New Orleans, Louisiana for the Unit.

(b) Refund any union dues collected pursuant to its collective-bargaining agreement with the Carpenters.

(c) Make any employees whole, with interest, for any losses they may have suffered as a result of their being employed subject to the terms of the collective-bargaining agreement between the Carpenters and Respondent rather than the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement Respondent had with the Union.

(d) Bargain collectively and in good faith with the Union as the exclusive collective bargaining representative of its Unit employees.

(e) Apply the terms of the July 1, 1986 to June 30, 1989 collective bargaining agreement with the Union including the requirement that Respondent use the Union's referral services when seeking applicants for employment.

(f) Make those whole, with interest, who suffered losses as a result of Respondent's failure to utilize the Union's referral services when seeking applicants for employment.

(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director for Region 15 may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, time cards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, post at its Lanham, Maryland and New Orleans, Louisiana, locations copies of the attached notice marked "Appendix."[2] Copies of the Notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that during the pendency of these proceedings, the Respondent

[2] If this order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading, "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read: "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to Employees, to all current employees and former employees employed by the Respondent at any time since November 2000.

(i) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., May 11, 2006.

_____

William N. Cates
Associate Chief Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by the Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT render unlawful assistance and support to the United Brotherhood of Carpenters and Joiners of America, Local Union No. 1846, AFL-CIO by entering into a collective-bargaining agreement with the Carpenters at a time when the Carpenters did not represent an uncoerced majority of our employees in an appropriate unit.

WE WILL NOT fail to abide by the terms of the July 1, 1986 to June 30, 1989, collective-bargaining agreement with International Alliance of Theatrical Stage Employees (IATSE), Local No. 39, AFL-CIO.

WE WILL NOT fail to apply the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement with International Alliance of Theatrical Stage Employees (IATSE), Local No. 39, AFL-CIO, including the requirement that we use the Union's referral services when seeking applicants for employment.

WE WILL withdraw recognition from the Carpenters and rescind the collective-bargaining agreement we entered into with the Carpenters in or about November 2000 in New Orleans, Louisiana for the Unit.

WE WILL refund union dues collected pursuant to our collective-bargaining agreement with the Carpenters.

WE WILL make employees whole, with interest, for losses they may have suffered as a result of their being employed subject to the terms of our collective-bargaining agreement with the Carpenters rather than the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement with International Alliance of Theatrical Stage Employees (IATSE), Local No. 39, AFL-CIO.

WE WILL bargain collectively and in good faith with International Alliance of Theatrical Stage Employees (IATSE), Local No. 39, AFL-CIO as the exclusive bargaining representative of the Unit.

WE WILL apply the terms of the July 1, 1986 to June 30, 1989 collective-bargaining agreement with IATSE including the requirement that we use IATSE's referral services when seeking applicants for employment.

WE WILL make employees whole, with interest, for losses they may have suffered as a result of our failure to utilize IATSE's referral services when seeking applicants for employment.

HARGROVE, INC.
(Employer)

Dated: _____ **By:** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1515 Poydras Street , Room 610, New Orleans, LA 70112-3723.
(504) 589-6361, Hours: 8:00 a.m. to 4: 30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S
COMPLIANCE OFFICER, (504) 589-6389